seems, however, that evidence of good faith and probable cause is admissible in mitigation of damages. *Rogers* v. *Toliver,* 139 Ga. 281, 77 S. E. 28, Ann. Cas. 1914A, 1017.

HUSBAND AND WIFE—FRAUDULENT CONVEYANCES—BURDEN OF PROOF.—A deed from a third person conveying land to the wife of an insolvent husband was unrecorded. The creditors of the insolvent husband sought to have the conveyance set aside as fraudulent. *Held,* the burden of proving fraud is on the creditors. *Southern States Phosphate & Fertilizer Co.* v. *Weekly* (S. C.), 93 S. E. 190.

For a discussion of the principle involved, see full and excellent article by Mr. Bolling H. Handy, 4 VA. LAW REV. 208.

INTERSTATE COMMERCE—TELEGRAPHS—VALIDITY OF CONDITIONS LIMITING LIABILITY.—The defendant received a message at its office in Ohio to be transmitted by telegraph to the plaintiff in Missouri. This telegram, although unrepeated, was correctly transmitted, but through the negligence of the telegraph company it was not delivered until eleven days after the date of sending, whereby the plaintiff sustained a loss of certain fees and his position. On the back of the telegraph blank, on which the message was written, were the usual conditions limiting liability for mistakes or non-delivery of an unrepeated message to the charge of sending, and placing fifty dollars as the maximum recovery in any case, unless the sender in writing placed a higher value of the message. *Held,* the plaintiff is entitled to recover fifty dollars. *Jacobs* v. *Western Union Telegraph Co.* (Mo.), 196 S. W. 31.

The Federal Interstate Commerce Act, as amended by the "Hepburn Act" and the "Carmack Amendment," declares telegraph companies doing business between States to be common carriers within the meaning of that act. Interstate telegrams are, therefore, governed by the federal law as laid down by the federal courts to the exclusion of all state statutes and decisions. *Poor* v. *Western Union Telg. Co.* (Mo.), 196 S. W. 28; *Brown* v. *Western Union Telg. Co.*, 234 U. S. 542. It is a well-settled doctrine in the United States that the sendee of a telegram has a right of action against the company for negligent mistake or non-delivery. *Fererro* v. *Western Union Telg. Co.* (D. C.), 35 L. R. A. 548. But the claim must be presented within a reasonable time. *Russell* v. *Western Union Telg. Co.*, 17 Kan. 230, 45 Pac. 598. There is much dispute among the state courts regarding the ground upon which this action should be based. Some base it upon the breach of public duty owed by the telegraph company to correctly transmit and deliver all messages. *Western Union Telg. Co.* v. *Dubois,* 128 Ill. 248. Others base the claim on the contract between the company and the sender. *Western Union Telg. Co.* v. *Holder,* 117 Ark. 210, 174 S. W. 552.

The federal rule seems to be that the sendee cannot recover in an action of tort. The contract made with the sender is said to enure to the benefit of the sendee. *Sherril* v. *Western Union Tel. Co.* (N. C.), 14 S. E. 94. This rule does not recognize any principle of public policy

whereby the company owes the public generally the duty to correctly transmit and deliver all messages,—hence, the sendee cannot bring an action for the breach of a duty which is not owed him. But the contract as embodied in the telegraph blank, is binding upon the sendee, and without this contract between the sender and the company the latter owed the sendee no duty, and hence there could be no negligence for which a recovery could be had in absence of the contract. *Gardner* v. *Western Union Telg. Co.*, 231 Fed. 405; *Findlay* v. *Western Union Telg. Co.* (C. C.), 64 Fed. 459.

The reasonableness and validity of the conditions limiting the telegraph company's liability is not a question to be passed upon by the state or federal courts, as this right is given to the Interstate Commerce Commission by Congress. *Williams* v. *Western Union Telg. Co.*, 203 Fed. 140; *Gardner* v. *Western Union Telg. Co., supra.* But even before telegraph companies had been declared common carriers, the United States Supreme Court had declared these conditions to be valid and binding. *Primrose* v. *Western Union Telg. Co.*, 154 U. S. 1.

The reason given by the court in allowing the plaintiff $50.00—the maximum recovery allowed by the contract for a repeated message—was that, as no error was made in the transmission of the message it would not have prevented the injury if it had been repeated, therefore it was considered as a repeated message.

LANDLORD AND TENANT—TERMINATION ON NOTICE—ILLEGAL USE OF PREMISES.—A storeroom was leased "for a saloon and for no other purposes," and a provision in the lease stipulated that if it became unlawful to conduct a saloon therein, the lessee might terminate the lease by giving proper notice. *Held,* provision enforcible. *Halloran* v. *Jacob Schmidt Brewing Co.* (Minn.), 162 N. W. 1082.

In the absence of an express stipulation in a lease of property, guarding against a possible future prohibition law, the courts are somewhat divided as to whether or not the lessee has an implied right to terminate the lease upon the passage of a prohibition law. Where property was leased for a first-class saloon and not to be used for any disreputable business, it was held that other legitimate businesses were not excluded, and the lessee was liable on his contract. *San Antonio Brewing Ass'n* v. *Brents*, 39 Tex. Civ. App. 443, 88 S. W. 368. And a lessee was held liable upon the lease of property for a saloon and restaurant, even though his right to conduct a saloon was taken away by an act of the legislature. *Standard Brewing Co.* v. *Weil* (Md.), 99 Atl. 661. This is because the lessee should have contemplated the possible passage of a prohibition law and should have stipulated as to his rights in case of the happening of such a contingency. *Houston, etc,,* v. *Keenan*, 99 Tex. 79, 88 S. W. 197; *Goodrum Tobacco Co.* v. *Potts-Thompson Liquor Co.*, 133 Ga. 776, 66 S. E. 1081. On the other hand the lessee has been held not liable for breach, even though the use of the property was not restricted to saloon purposes alone, because the purpose of the contract has become unlawful through no fault of the lessee. *Heart* v. *East End Brewing Co.*, 121 Tenn. 69, 113 S. W. 364.